IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3461 OF 2007

Mr. Akif Abdullah Thakur .... Petitioner
(Ori. Appellant/
Ori. Plaintiff)

Vs.

Mira Bhayander Municipal Corporation & Ors. .... Respondents

Ms. Daksha M. Shah for the Petitioner.

CORAM : A.S. OKA, J.
DATE : 9TH JULY, 2007

P.C.

1) Heard the learned Advocate for the Petitioner. The Petitioner is the original Plaintiff. In the suit filed by the original Plaintiff, by order dated 15th April 2004, the defendants in the suit were restrained by the Trial Court from taking any action in respect of buildings B, C and D standing on the suit property. In the said suit, an application was made by the second defendant at Exhibit 21. On the said application, the Trial Court passed an order on 7th July 2006 restraining the Petitioner from carrying out any further work of construction of buildings 'B, C and D' and further restraining the Petitioner from dealing with the suit property and from

creating third party interests in respect of the suit property. The said order dated 7th July 2006 has been confirmed in appeal by the District Court. The said two orders are challenged by the Petitioner by this Writ Petition under Article 227 of the Constitution of India.

2) The learned Advocate for the Petitioner submitted the construction of the buildings 'B, C and D' has been already completed and the result of the impugned order is that the Petitioner is unable to execute documents in favour of the third party purchasers. The learned Advocate further submitted that the orders impugned need modification and petitioners be atleast permitted to execute documents and get it registered.

3) I have considered the submissions. The Trial Court as well as Appellate Court has found that the earlier permission granted for non agricultural use of the land in question has been cancelled. There are serious issues raised about the legality and validity of the construction commenced by the Petitioner. The Trial Court has referred to the Photographs produced by the Petitioner which show that the construction work was in progress but the same was incomplete. The

Trial Court passed an order of injunction preventing the Petitioner from carrying out further construction and from creating third party interests to ensure that on the basis of earlier order of injunction in favour of the Petitioner, he should not carry out any further construction as there were serious doubts regarding legality and validity of the construction.

4) I find no error in the equitable and discretionary order passed by the Trial Court and confirmed by the Appellate Court. There is no merit in the Writ Petition and the same is rejected.

5) All contentions raised in the suit are expressly kept open.

(A.S. OKA, J.)